

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERTS MEAT MARKET, ALFRED HESS;  
WALTER HESS & HELEN HESS

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1965

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

*Herberts Meat Market*  
*Arts. 22 & 23*  
*Pur. Inv. & U.B.T.*

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Herberts Meat Market (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herberts Meat Market  
292 Front Street  
Hempstead, New York 11550  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

8th day of December, 1971.

*Linda Wilson*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERTS MEAT MARKET, ALFRED HESS;  
WALTER HESS & HELEN HESS

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1965

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of December , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Alfred Hess

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Alfred Hess  
141-05 68th Street  
Flushing, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

8th day of December , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HERBERTS MEAT MARKET, ALFRED HESS,;  
WALTER HESS & HELEN HESS

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1965

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of December , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Walter Hess &  
Helen Hess (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Walter & Helen Hess  
15 Evergreen Avenue  
Lynbrook, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

8th day of December , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERTS MEAT MARKET, ALFRED HESS;  
WALTER HESS & HELEN HESS

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1965

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of December, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Henry Spiegel

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Henry Spiegel  
141 Sutton Drive  
Plainview, New York 11803

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

8th day of December, 1971

Linda Wilson

Martha Funaro

## STATE TAX COMMISSION

In the Matter of the Petitions :  
of :  
HERBERTS MEAT MARKET, ALFRED HESS, :  
WALTER HESS AND HELEN HESS : DECISIONS  
for Redetermination of Deficiency or for :  
Refund of Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of :  
the Tax Law for the Year 1965. :

Petitioners, Herberts Meat Market, Alfred Hess, Walter Hess and Helen Hess, have filed petitions for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1965.

(File Nos. 2017, 48030762 and 46155964). At a calendar call held before Hon. Milton Koerner, State Tax Commissioner, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 9, 1971, at 11:30 A.M. the petitioners' representative waived a formal hearing and consented to the issuing of a decision without the introduction of additional evidence by petitioners. The State Tax Commission renders the following decision after a review by it of the entire record contained in the file.

## ISSUE

Did the payment of a workmen's compensation award in the sum of \$14,586.00 during the year 1965 by petitioner, Herberts Meat Market, to an illegally employed minor who was injured on the job constitute the payment of penalty which was not deductible as a business expense?

FINDINGS OF FACT

1. Petitioner, Herberts Meat Market, filed a New York State income and unincorporated business tax partnership return for the year 1965. It deducted as a business expense the sum of \$14,586.00 representing a workmen's compensation award paid by it.

2. Petitioners, Alfred Hess, Walter Hess and Helen Hess, filed New York State income tax returns for the year 1965 wherein they reported their distributive share of the partnership income of Herberts Meat Market.

3. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Herberts Meat Market, disallowing a deduction for the year 1965 for a workmen's compensation award in the sum of \$14,586.00 paid by the partnership. It also made another adjustment of \$75.55 based upon estimated payments being less than the amount claimed. This item is not contested and has been paid by the petitioner, Herberts Meat Market. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$541.91.

4. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Walter Hess and Helen Hess, increasing their income for the year 1965 by \$7,293.00, said sum representing their distributive share of the additional income of Herberts Meat Market as a result of the disallowance referred to in Paragraph 3 and accordingly issued a Notice of Deficiency in the sum of \$404.54.

5. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alfred Hess, increasing his income for the year 1965 by \$7,293.00, said sum representing his distributive share of the additional income of Herberts Meat Market as a result of the disallowance referred to in Paragraph 3 and accordingly issued a Notice of Deficiency in the sum of \$360.28.

6. Petitioner, Herberts Meat Market, illegally employed a minor, Mitchell Sullivan, who was injured on the job. On July 9, 1965, the Workmen's Compensation Board made an award in the sum of \$14,586.00 in favor of the injured minor and solely against the petitioner, Herberts Meat Market. A separate award was made against its workmen's compensation insurance carrier. The total amount of compensation paid to the minor was double the amount otherwise payable under the Workmen's Compensation Law. This increased payment was made pursuant to section 14-a of the Workmen's Compensation Law.

#### CONCLUSIONS OF LAW

A. That the increased payment, authorized by section 14-a of the Workmen's Compensation Law, which provides that the compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the accident is a minor under 18 years of age employed in violation of the Labor Law, is not punitive in character and is not a penalty but is increased compensation. Industrial Commissioner v McCarthy 295 N.Y. 443, 68 N.E. 2d. 434 (1946). Sackolwitz v Charles Hamburg & Co. 295 N.Y. 264, 67 N.E. 2d. 152 (1946).

B. That therefore the payment made by petitioner, Herberts Meat Market, to the injured minor during the year 1965 pursuant to

section 14-a of the Workmen's Compensation Law constituted the payment of compensation and not the payment of a penalty and was thus deductible by the partnership as a business expense in said year.

C. That the petitions of Alfred Hess, Walter Hess and Helen Hess are granted and the Notices of Deficiency issued against them dated February 10, 1969 are cancelled.

D. That the petition of Herberts Meat Market is granted to the extent of cancelling the disallowance of the deduction for the workmen's compensation award in the sum of \$14,586.00 and the amount of additional unincorporated business tax due is reduced from \$463.46 to \$75.55 and the Notice of Deficiency issued February 10, 1969 is reduced from \$541.91 to \$93.29, which sum has been paid by the petitioner, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*December 8, 1971.*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koern*  
\_\_\_\_\_  
COMMISSIONER



STATE OF NEW YORK  
Department of Taxation and Finance  
STATE CAMPUS  
ALBANY, N.Y. 12226

*Burdick Razel*

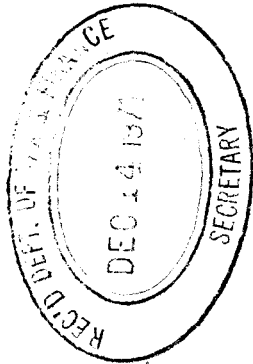
*12-10-71*

*45R*

~~Herberts Meat Market~~

~~292 Front Street~~

~~Hempstead, New York 11550~~



*RECEIVED*  
*DEC 14 1971*  
*45R*  
RECEIVED  
ADDRESS UNKNOWN  
NO SUCH OFFICE  
NOT IN FILE IN THIS DIVISION  
*Bdy. hand*

**CERTIFIED**  
**No. 592255**  
**MAIL**



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

December 8, 1971

Herberts Meat Market  
292 Front Street  
Hempstead, New York 11550

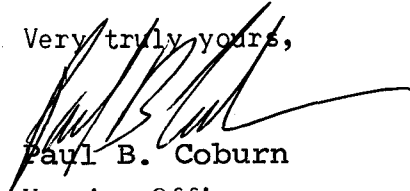
Gentlemen:

Please take notice of the **Decisions** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**690 & 722** of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
Paul B. Coburn  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petitions	:	
of	:	
HERBERTS MEAT MARKET, ALFRED HESS, WALTER HESS AND HELEN HESS	:	DECISIONS
for Redetermination of Deficiency or for Refund of Personal Income and Unincorporated Business Taxes under Articles 22 and 23 of the Tax Law for the Year 1965.	:	

---

Petitioners, Herberts Meat Market, Alfred Hess, Walter Hess and Helen Hess, have filed petitions for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1965. (File Nos. 2017, 48030762 and 46155964). At a calendar call held before Hon. Milton Koerner, State Tax Commissioner, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 9, 1971, at 11:30 A.M. the petitioners' representative waived a formal hearing and consented to the issuing of a decision without the introduction of additional evidence by petitioners. The State Tax Commission renders the following decision after a review by it of the entire record contained in the file.

ISSUE

Did the payment of a workmen's compensation award in the sum of \$14,586.00 during the year 1965 by petitioner, Herberts Meat Market, to an illegally employed minor who was injured on the job constitute the payment of penalty which was not deductible as a business expense?

FINDINGS OF FACT

1. Petitioner, Herberts Meat Market, filed a New York State income and unincorporated business tax partnership return for the year 1965. It deducted as a business expense the sum of \$14,586.00 representing a workmen's compensation award paid by it.

2. Petitioners, Alfred Hess, Walter Hess and Helen Hess, filed New York State income tax returns for the year 1965 wherein they reported their distributive share of the partnership income of Herberts Meat Market.

3. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Herberts Meat Market, disallowing a deduction for the year 1965 for a workmen's compensation award in the sum of \$14,586.00 paid by the partnership. It also made another adjustment of \$75.55 based upon estimated payments being less than the amount claimed. This item is not contested and has been paid by the petitioner, Herberts Meat Market. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$541.91.

4. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Walter Hess and Helen Hess, increasing their income for the year 1965 by \$7,293.00, said sum representing their distributive share of the additional income of Herberts Meat Market as a result of the disallowance referred to in Paragraph 3 and accordingly issued a Notice of Deficiency in the sum of \$404.54.

5. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alfred Hess, increasing his income for the year 1965 by \$7,293.00, said sum representing his distributive share of the additional income of Herberts Meat Market as a result of the disallowance referred to in Paragraph 3 and accordingly issued a Notice of Deficiency in the sum of \$360.28.

6. Petitioner, Herberts Meat Market, illegally employed a minor, Mitchell Sullivan, who was injured on the job. On July 9, 1965, the Workmen's Compensation Board made an award in the sum of \$14,586.00 in favor of the injured minor and solely against the petitioner, Herberts Meat Market. A separate award was made against its workmen's compensation insurance carrier. The total amount of compensation paid to the minor was double the amount otherwise payable under the Workmen's Compensation Law. This increased payment was made pursuant to section 14-a of the Workmen's Compensation Law.

#### CONCLUSIONS OF LAW

A. That the increased payment, authorized by section 14-a of the Workmen's Compensation Law, which provides that the compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the accident is a minor under 18 years of age employed in violation of the Labor Law, is not punitive in character and is not a penalty but is increased compensation. Industrial Commissioner v McCarthy 295 N.Y. 443, 68 N.E. 2d. 434 (1946). Sackolwitz v Charles Hamburg & Co. 295 N.Y. 264, 67 N.E. 2d. 152 (1946).

B. That therefore the payment made by petitioner, Herberts Meat Market, to the injured minor during the year 1965 pursuant to

section 14-a of the Workmen's Compensation Law constituted the payment of compensation and not the payment of a penalty and was thus deductible by the partnership as a business expense in said year.

C. That the petitions of Alfred Hess, Walter Hess and Helen Hess are granted and the Notices of Deficiency issued against them dated February 10, 1969 are cancelled.

D. That the petition of Herberts Meat Market is granted to the extent of cancelling the disallowance of the deduction for the workmen's compensation award in the sum of \$14,586.00 and the amount of additional unincorporated business tax due is reduced from \$463.46 to \$75.55 and the Notice of Deficiency issued February 10, 1969 is reduced from \$541.91 to \$93.29, which sum has been paid by the petitioner, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*December 8, 1971.*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*James Morley*  
COMMISSIONER

*Milton Koern*  
COMMISSIONER